

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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Before the Court for consideration is Defendant Thompson's Motion for Preauthorization Discovery (Doc. #32) filed on November 23, 2010. The Government filed a Response to Defendant's Motion (Doc. #39) on December 22, 2010, and Defendant filed a Reply Memorandum (Doc. #44) on January 12, 2011. On January 25, 2011, the Court conducted a hearing (Doc. #45) at which the Court directed the parties to submit supplemental memoranda to the Court by February 8, 2011, and further Ordered that Plaintiff United States submit the withheld discovery materials at issue to the Court for *In Camera* review.

On February 8, 2011, Defendant filed a supplemental memorandum in support of Defendant’s Motion for Preauthorization Discovery (Doc. #47). Also on February 8, 2011, Plaintiff United States submitted for the Court *In Camera* review certain withheld material related to Defendant’s discovery request.

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1 By Defendant's Motion for Preauthorization Discovery (Doc. #32),  
2 Defendant Thompson seeks an Order requiring the Government to produce  
3 discovery relevant to the impending decision of the United States Attorney whether  
4 to recommend that the Attorney General of the United States authorized a death  
5 penalty prosecution of Defendant Thompson. Defendant Thompson further seeks the  
6 Government to immediately disclose exculpatory and impeaching information in its  
7 possession in accord with Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v.  
8 United States, 405 U.S. 150, 154, (1972).

9 The Government responds that Defendant Thompson seeks production of  
10 more discovery than the Government is required to produce under 18 U.S.C. § 3500  
11 and Rule 26.2 of the Federal Rules of Criminal Procedure. The Government further  
12 states that it has provided all Brady material and that it recognizes its duty to  
13 continue to produce additional exculpatory evidence should it be discovered. The  
14 Government, however, objects to the production of witness statements not only  
15 because it is not required by law, but because disclosure of various witness  
16 statements would seriously endanger the safety of Government witnesses and their  
17 families, given the nature and circumstances of the crime charged against Defendant  
18 Thompson, and the criminal history and gang affiliation of Defendant.

19 Defendant is no doubt correct that the strength of the Government's case is  
20 a factor that the Attorney General and the Department of Justice's Review  
21 Committee on Capital Cases may consider in evaluating whether to authorize a death  
22 penalty prosecution in this case. That fact, however, does not create any substantive  
23 discovery or procedural rights requiring the Government to produce materials which  
24 may be relied upon by the Attorney General of the United States or the Department  
25 of Justice's Review Committee in making the prosecution decision. United States v.  
26 Fernandez, 231 F.3d 1240, 1246 (9th Cir. 2000).

1           The Court has reviewed, *In Camera*, the materials produced by the  
2 Government including witness statements, evidence of prior convictions of potential  
3 witnesses and other information arguably relating to the credibility of some of the  
4 potential witnesses in this case. All of this information is, of course, in the  
5 possession of the Department of Justice and the Attorney General of the United  
6 States. The fact that Plaintiff United States may consider these materials in making  
7 its prosecution decision whether to seek the death penalty, does not create an  
8 independent basis for discovery on behalf of Defendant Thompson, notwithstanding  
9 the fact that Defendant Thompson would undoubtedly find the information helpful to  
10 his defense against the Government's case-in-chief at the time of trial. This case is  
11 not on the eve of trial, or proximate to a trial date. There will be ample opportunity  
12 for the Government to comply with the requirements of the Jencks Act,  
13 Brady/Giglio, and any other discovery obligations resting on the shoulders on the  
14 prosecution in connection with the trial of this case. Notwithstanding, the  
15 Government's continuing obligation to comply with all applicable law concerning  
16 the timely production of discoverable material in connection with the trial of this  
17 case, the Court finds Defendant's Motion for Preauthorization Discovery  
18 (Doc. #32 ) lacks merit at this stage of the proceedings.

19           **IT IS THEREFORE ORDERED** that Defendant Corey Thompson's  
20 Motion for Preauthorization Discovery (Doc. #32) is **DENIED**.

21           **IT IS FURTHER ORDERED** that the materials submitted by the  
22 Government for *In Camera* review on February 8, 2011, shall be retained by the  
23 Clerk of Court in a sealed condition as part of the permanent record in this case.

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**IT IS FURTHER ORDERED** that Government counsel shall ensure that a copy of this Court's Order is included as part of the Government's presentation to the United States Attorney and the Attorney General of the United States in connection with the determination whether to authorize a death penalty prosecution in this case.

DATED: February 23, 2011.

  
Philip M. Pro